



February 18, 2014

ENGROSSED SENATE BILL No. 27

DIGEST OF SB 27 (Updated February 17, 2014 1:34 pm - DI 107)

Citations Affected: IC 31-19.

Synopsis: Petitions for adoption. Prohibits granting an adoption while certain appeals are pending. Provides that the consent to an adoption is not required from a child's biological father to whom the following apply: (1) the father had knowledge of the pregnancy; and (2) the father abandoned, after having knowledge of the pregnancy and without justifiable cause, the mother during the pregnancy. Provides that the court in which a petition for adoption has been filed has exclusive jurisdiction over the child if there is a petition for adoption and a paternity action pending at the same time. (Current law provides exclusive jurisdiction when there is a petition for adoption and a petition for paternity pending.) (The introduced version of this bill was prepared by the commission on courts.)

Effective: July 1, 2014.

**Zakas, Steele, Broden, Randolph,
Bray, Head**

(HOUSE SPONSOR — RICHARDSON)

January 7, 2014, read first time and referred to Committee on Judiciary.
January 16, 2014, amended, reported favorably — Do Pass.
January 21, 2014, read second time, ordered engrossed. Engrossed.
January 23, 2014, read third time, passed. Yeas 48, nays 0.

HOUSE ACTION

February 4, 2014, read first time and referred to Committee on Judiciary.
February 18, 2014, amended, reported — Do Pass.

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February 18, 2014

Second Regular Session 118th General Assembly (2014)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

ENGROSSED SENATE BILL No. 27

A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 31-19-2-13, AS AMENDED BY P.L.145-2006,
2 SECTION 246, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2014]: Sec. 13. (a) Except for a child who is
4 under the care and supervision of the department, a petitioner for
5 adoption may file a separate, ex parte, verified petition requesting
6 temporary custody of a child sought to be adopted at the time of or any
7 time after the filing of a petition for adoption. The petition for
8 temporary custody must be signed by each petitioner for adoption.
9 (b) A court may grant a petition for temporary custody filed under
10 subsection (a) if the court finds that:
11 (1) the petition for adoption is in proper form; and
12 (2) placing the child with the petitioner or petitioners for adoption
13 pending the hearing on the petition for adoption is in the best
14 interests of the child.
15 (c) If temporary custody is granted under this section, the petitioner
16 or petitioners for adoption are legally and financially responsible for

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the child until otherwise ordered by the court.

(d) To the extent that a temporary custody order issued under this section conflicts with a custody order issued by any other court except a court having appellate jurisdiction over the child, a temporary order under this section controls.

(e) A:

(1) party to the adoption; or

(2) person who had:

(A) custody of; or

(B) parenting time or visitation with;

the child before a temporary custody order was issued under this section;

may file a petition to suspend, modify, or revoke the temporary custody order granted under this section.

(f) Upon receipt of a petition described in subsection (e), the court shall set the matter for hearing.

(g) The court may suspend, modify, or revoke the temporary custody order if the court determines suspension, modification, or revocation of the temporary custody order is in the best interests of the child.

SECTION 2. IC 31-19-2-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 14. (a) If a petition for adoption and a ~~petition to establish~~ paternity ~~action~~ are pending at the same time for a child sought to be adopted, the court in which the petition for adoption has been filed has exclusive jurisdiction over the child, and the paternity proceeding must be consolidated with the adoption proceeding.

(b) If the petition for adoption is dismissed, the court hearing the consolidated adoption and paternity proceeding shall determine who has custody of the child under IC 31-19-11-5.

(c) Following a dismissal of the adoption petition under subsection (b), the court may:

(1) retain jurisdiction over the paternity proceeding; or

(2) return the paternity proceeding to the court in which it was originally filed.

If the paternity proceeding is returned to the court in which it was originally filed, the court assumes jurisdiction over the child, subject to any provisions of the consolidated court's order under IC 31-19-11-5.

SECTION 3. IC 31-19-9-8, AS AMENDED BY P.L.130-2005, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 8. (a) Consent to adoption, which may be required under section 1 of this chapter, is not required from any of the



- 1 following:
- 2 (1) A parent or parents if the child is adjudged to have been
- 3 abandoned or deserted for at least six (6) months immediately
- 4 preceding the date of the filing of the petition for adoption.
- 5 (2) A parent of a child in the custody of another person if for a
- 6 period of at least one (1) year the parent:
- 7 (A) fails without justifiable cause to communicate
- 8 significantly with the child when able to do so; or
- 9 (B) knowingly fails to provide for the care and support of the
- 10 child when able to do so as required by law or judicial decree.
- 11 (3) The biological father of a child born out of wedlock whose
- 12 paternity has not been established:
- 13 (A) by a court proceeding other than the adoption proceeding;
- 14 or
- 15 (B) by executing a paternity affidavit under IC 16-37-2-2.1.
- 16 (4) The biological father of a child born out of wedlock who was
- 17 conceived as a result of:
- 18 (A) a rape for which the father was convicted under
- 19 IC 35-42-4-1;
- 20 (B) child molesting (IC 35-42-4-3);
- 21 (C) sexual misconduct with a minor (IC 35-42-4-9); or
- 22 (D) incest (IC 35-46-1-3).
- 23 (5) The putative father of a child born out of wedlock if the
- 24 putative father's consent to adoption is irrevocably implied under
- 25 section 15 of this chapter.
- 26 (6) The biological father of a child born out of wedlock if the:
- 27 (A) father's paternity is established after the filing of a petition
- 28 for adoption in a court proceeding or by executing a paternity
- 29 affidavit under IC 16-37-2-2.1; and
- 30 (B) father is required to but does not register with the putative
- 31 father registry established by IC 31-19-5 within the period
- 32 required by IC 31-19-5-12.
- 33 (7) A parent who has relinquished the parent's right to consent to
- 34 adoption as provided in this chapter.
- 35 (8) A parent after the parent-child relationship has been
- 36 terminated under IC 31-35 (or IC 31-6-5 before its repeal).
- 37 (9) A parent judicially declared incompetent or mentally defective
- 38 if the court dispenses with the parent's consent to adoption.
- 39 (10) A legal guardian or lawful custodian of the person to be
- 40 adopted who has failed to consent to the adoption for reasons
- 41 found by the court not to be in the best interests of the child.
- 42 (11) A parent if:



- 1 (A) a petitioner for adoption proves by clear and convincing
- 2 evidence that the parent is unfit to be a parent; and
- 3 (B) the best interests of the child sought to be adopted would
- 4 be served if the court dispensed with the parent's consent.
- 5 (12) A child's biological father who denies paternity of the child
- 6 before or after the birth of the child if the denial of paternity:
- 7 (A) is in writing;
- 8 (B) is signed by the child's father in the presence of a notary
- 9 public; and
- 10 (C) contains an acknowledgment that:
- 11 (i) the denial of paternity is irrevocable; and
- 12 (ii) the child's father will not receive notice of adoption
- 13 proceedings.
- 14 A child's father who denies paternity of the child under this
- 15 subdivision may not challenge or contest the child's adoption.
- 16 **(13) A child's biological father to whom all the following**
- 17 **apply:**
- 18 **(A) The father had knowledge of the pregnancy. Evidence**
- 19 **that the father had knowledge under this clause includes**
- 20 **any of the following:**
- 21 **(i) The father registered with the putative father registry**
- 22 **under IC 31-19-5 or registered under a similar law in**
- 23 **another state.**
- 24 **(ii) The father was served notice of the adoption under**
- 25 **IC 31-19-3 or was served notice under a similar law in**
- 26 **another state.**
- 27 **(iii) The father filed a petition to establish paternity**
- 28 **under IC 31-14 or filed a petition under a similar law in**
- 29 **another state.**
- 30 **(iv) Any other evidence that the father had knowledge of**
- 31 **the pregnancy.**
- 32 **(B) The father abandoned, after having knowledge**
- 33 **described in clause (A) and without justifiable cause, the**
- 34 **birth mother during the pregnancy.**
- 35 (b) If a parent has made only token efforts to support or to
- 36 communicate with the child the court may declare the child abandoned
- 37 by the parent.
- 38 (c) The court may consider the father's failure to pay, in
- 39 accordance with the father's financial ability, a fair and reasonable
- 40 amount of the living and medical expenses incurred in connection
- 41 with the birth mother's pregnancy and the child's birth as evidence
- 42 that the father abandoned the birth mother under subsection



1 (a)(13).

2 SECTION 4. IC 31-19-11-6 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 6. The court may **not**
4 ~~hear and~~ grant a petition for adoption ~~even if an appeal of a decision~~
5 ~~regarding the termination of the parent-child relationship is pending~~
6 ~~of a child if:~~

7 (1) the parent-child relationship between the child and a
8 parent has been terminated; and

9 (2) one (1) or more of the following apply with respect to the
10 termination described in subdivision (1):

11 (A) The time for filing an appeal (including a request for
12 transfer or certiorari) has not elapsed.

13 (B) An appeal is pending.

14 (C) An appellate court is considering a request for transfer
15 or certiorari.



COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 27, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 31-17-4.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]:

Chapter 4.5. Requirements When Adoption is Pending for a Child Who is the Subject of a Custody, Parenting Time, or Modification of Custody or Parenting Time Action

Sec. 1. An individual shall give notice of a custody, parenting time, or modification of custody or parenting time action to an attorney or agency that:

(1) serves the individual with notice under:

(A) IC 31-19-3;

(B) IC 31-19-4; or

(C) IC 31-19-4.5; or

(2) informs the individual in any other manner.

Sec. 2. An individual who:

(1) has not been served notice of an adoption as described in section 1 of this chapter;

(2) is a party to a custody, parenting time, or modification of custody or parenting time action under this article;

(3) knows that an adoption has been filed regarding the child who is the subject of the custody, parenting time, or modification of custody or parenting time action; and

(4) knows the court in which the adoption is pending;

shall serve the clerk of the court having jurisdiction over the adoption with a notice of the custody, parenting time, or modification of custody or parenting time action.

Sec. 3. The notice under sections 1 and 2 of this chapter must include:

(1) the name of the court;

(2) the cause number; and

(3) the date of filing;

of the custody, parenting time, or modification of custody or parenting time action.

Sec. 4. Upon notice that a court in which an adoption is pending has assumed jurisdiction of a custody, parenting time, or



modification of custody or parenting time action under IC 31-19-2-15, the court in which the custody, parenting time, or modification of custody or parenting time action was pending shall stay all proceedings in the custody, parenting time, or modification of custody or parenting time action until further order from the court in which the adoption is pending.

SECTION 2. IC 31-19-2-13, AS AMENDED BY P.L.145-2006, SECTION 246, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 13. (a) Except for a child who is under the care and supervision of the department, a petitioner for adoption may file a separate, ex parte, verified petition requesting temporary custody of a child sought to be adopted at the time of or any time after the filing of a petition for adoption. The petition for temporary custody must be signed by each petitioner for adoption.

(b) A court may grant a petition for temporary custody filed under subsection (a) if the court finds that:

- (1) the petition for adoption is in proper form; and
- (2) placing the child with the petitioner or petitioners for adoption pending the hearing on the petition for adoption is in the best interests of the child.

(c) If temporary custody is granted under this section, the petitioner or petitioners for adoption are legally and financially responsible for the child until otherwise ordered by the court.

(d) To the extent that a temporary custody order issued under this section conflicts with a custody order issued under IC 31-14 or IC 31-17, a temporary order under this section controls.

SECTION 3. IC 31-19-2-15 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 15. (a) Except for a child who is under the care and supervision of the department, if a petition for adoption and a petition seeking custody, parenting time, or modification of custody or parenting time are pending at the same time for a child sought to be adopted, the court in which the petition for adoption has been filed may consolidate the custody, parenting time, or modification of custody or parenting time proceeding with the adoption proceeding.

(b) If the court consolidates the proceedings as described in subsection (a), the court in which the petition for adoption has been filed has exclusive jurisdiction over the child.

(c) If the petition for adoption is dismissed, the court hearing a consolidated adoption and custody, parenting time, or modification of custody or parenting time proceeding shall determine who has



custody of the child under IC 31-19-11-5.

(d) Following a dismissal of the adoption petition under subsection (c), if the court consolidated the proceedings as described in subsection (a), the court shall return the custody, parenting time, or modification of custody or parenting time proceeding to the court in which it was originally filed. When the custody, parenting time, or modification of custody or parenting time proceeding is returned to the court in which it was originally filed, the court assumes jurisdiction over the child, subject to any provisions of the consolidated court's order under IC 31-19-11-5."

Page 1, line 3, strike "hear and".

Page 1, line 3, strike "if an appeal of a decision".

Page 1, line 4, strike "regarding the termination of the parent-child relationship is pending." and insert "of a child if:

(1) the parent-child relationship between the child and a parent has been terminated; and

(2) one (1) or more of the following apply with respect to the termination described in subdivision (1):

(A) The time for filing an appeal (including a request for transfer or certiorari) has not elapsed.

(B) An appeal is pending.

(C) An appellate court is considering a request for transfer or certiorari."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 27 as introduced.)

STEELE, Chairperson

Committee Vote: Yeas 10, Nays 0.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred Senate Bill 27, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 1 through 16.

Page 2, delete lines 1 through 25.

Page 3, line 2, delete "under IC 31-14 or" and insert **"by any other court except a court having appellate jurisdiction over the child,"**.

Page 3, line 3, delete "IC 31-17,".

Page 3, delete lines 4 through 29, begin a new paragraph and insert:
"(e) A:

(1) party to the adoption; or

(2) person who had:

(A) custody of; or

(B) parenting time or visitation with;

the child before a temporary custody order was issued under this section;

may file a petition to suspend, modify, or revoke the temporary custody order granted under this section.

(f) Upon receipt of a petition described in subsection (e), the court shall set the matter for hearing.

(g) The court may suspend, modify, or revoke the temporary custody order if the court determines suspension, modification, or revocation of the temporary custody order is in the best interests of the child.

SECTION 2. IC 31-19-2-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 14. (a) If a petition for adoption and a ~~petition to establish~~ paternity ~~action~~ are pending at the same time for a child sought to be adopted, the court in which the petition for adoption has been filed has exclusive jurisdiction over the child, and the paternity proceeding must be consolidated with the adoption proceeding.

(b) If the petition for adoption is dismissed, the court hearing the consolidated adoption and paternity proceeding shall determine who has custody of the child under IC 31-19-11-5.

(c) Following a dismissal of the adoption petition under subsection (b), the court may:

(1) retain jurisdiction over the paternity proceeding; or

(2) return the paternity proceeding to the court in which it was originally filed.

If the paternity proceeding is returned to the court in which it was

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originally filed, the court assumes jurisdiction over the child, subject to any provisions of the consolidated court's order under IC 31-19-11-5.

SECTION 3. IC 31-19-9-8, AS AMENDED BY P.L.130-2005, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 8. (a) Consent to adoption, which may be required under section 1 of this chapter, is not required from any of the following:

- (1) A parent or parents if the child is adjudged to have been abandoned or deserted for at least six (6) months immediately preceding the date of the filing of the petition for adoption.
- (2) A parent of a child in the custody of another person if for a period of at least one (1) year the parent:
 - (A) fails without justifiable cause to communicate significantly with the child when able to do so; or
 - (B) knowingly fails to provide for the care and support of the child when able to do so as required by law or judicial decree.
- (3) The biological father of a child born out of wedlock whose paternity has not been established:
 - (A) by a court proceeding other than the adoption proceeding; or
 - (B) by executing a paternity affidavit under IC 16-37-2-2.1.
- (4) The biological father of a child born out of wedlock who was conceived as a result of:
 - (A) a rape for which the father was convicted under IC 35-42-4-1;
 - (B) child molesting (IC 35-42-4-3);
 - (C) sexual misconduct with a minor (IC 35-42-4-9); or
 - (D) incest (IC 35-46-1-3).
- (5) The putative father of a child born out of wedlock if the putative father's consent to adoption is irrevocably implied under section 15 of this chapter.
- (6) The biological father of a child born out of wedlock if the:
 - (A) father's paternity is established after the filing of a petition for adoption in a court proceeding or by executing a paternity affidavit under IC 16-37-2-2.1; and
 - (B) father is required to but does not register with the putative father registry established by IC 31-19-5 within the period required by IC 31-19-5-12.
- (7) A parent who has relinquished the parent's right to consent to adoption as provided in this chapter.
- (8) A parent after the parent-child relationship has been terminated under IC 31-35 (or IC 31-6-5 before its repeal).



(9) A parent judicially declared incompetent or mentally defective if the court dispenses with the parent's consent to adoption.

(10) A legal guardian or lawful custodian of the person to be adopted who has failed to consent to the adoption for reasons found by the court not to be in the best interests of the child.

(11) A parent if:

(A) a petitioner for adoption proves by clear and convincing evidence that the parent is unfit to be a parent; and

(B) the best interests of the child sought to be adopted would be served if the court dispensed with the parent's consent.

(12) A child's biological father who denies paternity of the child before or after the birth of the child if the denial of paternity:

(A) is in writing;

(B) is signed by the child's father in the presence of a notary public; and

(C) contains an acknowledgment that:

(i) the denial of paternity is irrevocable; and

(ii) the child's father will not receive notice of adoption proceedings.

A child's father who denies paternity of the child under this subdivision may not challenge or contest the child's adoption.

(13) A child's biological father to whom all the following apply:

(A) The father had knowledge of the pregnancy. Evidence that the father had knowledge under this clause includes any of the following:

(i) The father registered with the putative father registry under IC 31-19-5 or registered under a similar law in another state.

(ii) The father was served notice of the adoption under IC 31-19-3 or was served notice under a similar law in another state.

(iii) The father filed a petition to establish paternity under IC 31-14 or filed a petition under a similar law in another state.

(iv) Any other evidence that the father had knowledge of the pregnancy.

(B) The father abandoned, after having knowledge described in clause (A) and without justifiable cause, the birth mother during the pregnancy.

(b) If a parent has made only token efforts to support or to communicate with the child the court may declare the child abandoned



by the parent.

(c) The court may consider the father's failure to pay, in accordance with the father's financial ability, a fair and reasonable amount of the living and medical expenses incurred in connection with the birth mother's pregnancy and the child's birth as evidence that the father abandoned the birth mother under subsection (a)(13)."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 27 as printed January 17, 2014.)

STEUERWALD, Chair

Committee Vote: yeas 9, nays 0.

